



# Department of Justice

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**STATEMENT OF**

**DANIEL S. FRIDMAN  
SENIOR COUNSEL TO THE DEPUTY ATTORNEY GENERAL AND  
SPECIAL COUNSEL FOR HEALTH CARE FRAUD  
U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE**

**SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE**

**CONCERNING**

**ABUSE OF OUR ELDERLY: HOW WE CAN STOP IT**

**PRESENTED**

**July 18, 2007**

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Mr. Chairman, thank you for inviting the Department of Justice to testify on its role in preventing and prosecuting abuse against our vulnerable elder population. We are grateful for this Committee's bipartisan approach to and leadership on this increasingly important topic.

I am an Assistant U.S. Attorney from Miami, on detail to Main Justice where I advise the Deputy Attorney General on health care fraud enforcement policy. In that capacity, I have a bird's eye view of what the Department's different components are doing to fight elder abuse and to hold the abusers accountable. Elder abuse, neglect and exploitation comes in many forms ranging from physical abuse and neglect, to failures of care in institutional settings, to financial abuse in its many manifestations. The Department has pursued a multi-faceted approach in fighting elder abuse within the constraints of its statutory authority. We are pursuing criminal prosecution and civil litigation in major telemarketing and failure of care cases, organizing and participating in multi-agency regional task forces, funding research to enhance forensic tools to help us better identify and prove elder abuse, and partnering with other federal agencies such as the FTC to provide educational materials informing elders how to avoid becoming victims of fraud.

While we have successfully pursued civil and criminal prosecutions of systemic abuse and neglect in long term care, our local and state law enforcement partners have successfully pursued the lion's share of prosecutions of abuse and neglect in domestic and community settings, as primary jurisdiction over these crimes lies with them. In addition, our State Attorneys General and Medicaid Fraud Control Unit colleagues continue to successfully pursue abuse and neglect in facilities of various types. We also are pleased to describe groundbreaking elder abuse research sponsored by the National Institute of Justice (NIJ), the Department's research arm. While the human cost of elder abuse is more graphically presented in the individual stories revealed in the cases we have brought to redress abuse of older Americans, the research will make it possible to improve detection, prevention and how we bring those cases in the future.

As more than 70 million baby boomers age, the number of older Americans will skyrocket in the next three decades, along with them, the number of frail and disabled elders needing long term care. Americans 85 and older, "the oldest old" are the fastest growing segment

of the population. They also are the most vulnerable. Previous testimony before this Committee, as well as government, academic, and media reports, indicate that seriously inadequate care remains a persistent problem in some nursing homes and other long-term care facilities. Caring for growing numbers of frail and incapacitated elders at home also presents increasing challenges, significant demands on caregivers, and rising risk of abuse and neglect. Against this backdrop, and to respond to these growing problems, the Department is pursuing its Elder Justice and Nursing Home Initiative a primary objective of which has been to enhance enforcement, knowledge, training, coordination, public awareness, forensics, and research at all levels.

Given the complexity of the issues, and their increasing demographic significance, the Department is employing a multi-pronged approach: to hold abusers accountable (whether they be individuals or corporations), assist victims, train those on the front lines, develop a coordinated approach with other entities and disciplines, promote research that can be translated into practice, and prevent elder abuse before it occurs. Those are the topics I will touch on in my testimony today.

## **1. Prosecution of Federal Cases to Redress Elder Abuse, Neglect and Exploitation**

The Department's United States Attorneys Offices (USAOs) and litigating divisions pursue a variety of elder abuse and elder justice activities. Individuals and corporate entities are prosecuted under criminal, civil and civil rights laws for failing to provide care to frail residents or targeting older people with financial fraud schemes. Some USAOs also are involved in outreach and training to providers, law enforcement, coroners and medical examiners. Several districts and states have working groups that meet regularly, including federal, state and local law enforcement as well as representatives of many of the regulatory agencies involved in the care of the elderly.

### **A. Failure of Care Cases**

#### **1. *Criminal Prosecutions***

Criminal prosecutions of nursing homes and other providers for failing to care for vulnerable elders can be complex, but several USAOs have brought successful criminal prosecutions. These cases, called "failure of care" cases, typically involve defendants that divert substantial portions of the Medicare and Medicaid reimbursements for their own gain while failing to provide adequate care to residents.

Cases that illustrate this approach include *United States v. Melville Borne, et.al*, (EDLA); *United States v. AHM*, (EDMO), *United States v. Lemon*, (WDTX), and *United States v. Atrium I Nursing Home and Bell*, (WDPA).

- In *Borne*, the owner of a chain of nursing homes was convicted of diverting large sums of money to purchase, among other things, a private plane and a 150-acre personal estate while staff members were forced to take up collections from residents and family

members to buy food for the residents' meals. He was sentenced to prison and ordered to forfeit nearly \$4 million in property. The case won Honorable Mention as the 2006 National Healthcare Anti-Fraud Association Investigation of the year.

- In AHM, a Missouri nursing home management company, its CEO, and three of the homes, pleaded guilty to felony criminal charges in connection with the failure of care and abuse of elderly residents. A civil False Claims Act suit against the same defendants was settled for \$1,250,000.
- In Lemon, the defendant pled guilty to funneling large amounts of Medicare and Medicaid dollars to his own personal gain. In the end, he abandoned all of his nursing homes and Texas authorities had to assume control and management of a number of those homes, with a loss Medicare of about \$4.2 million.
- In Atrium I, the facility and Marta Bell, its administrator, were tried and convicted of several counts of health care fraud and multiple false statements relating to their failure to provide the required care to Atrium's residents, most of whom were diagnosed with Alzheimer's disease, and the falsifying the medical and staffing records. Atrium I is no longer in operation and Bell was sentenced in 2006 to 60 months imprisonment.
- In Angel Health Care, Inc., the home health care agency and its owner, Wilma Kpohanu were found guilty health care fraud and making false statements for billing for skilled nursing services that were not provided to homebound clients. In addition, an employee, Manjula Sankarappa pleaded guilty to obstructing an OIG investigation by destroying and altering documents.

## 2. *Civil Cases*

Civil failure of care cases are pursued by the Department under the civil False Claims Act where providers knowingly bill the United States for goods or services that were not provided or were worthless. Most of these cases are resolved for monetary damages under the False Claims Act, in addition to ongoing monitoring either under a Corporate Integrity agreement monitored by HHS-OIG or a consent or settlement judgment.

These are difficult and time consuming cases, and many are currently in litigation so we cannot comment upon them,

- United States ex rel. Chadwick v. Forrest Preston, (NDGA) in which the Department alleged that Life Care Centers of Lawrenceville was so deficient in nursing staff that it failed to properly care for and treat residents with diabetes, failed to have proper care planning and nursing interventions, and allowed patient's wounds to fester and become infested with maggots. The case settled for \$2.5 million and a five year Corporate Integrity Agreement. Under the terms of the Corporate Integrity Agreement, Life Care must report to an outside monitor and implement policies to improve patient

care.

- In *United States v. O'Hara Regional Center for Rehabilitation in Colorado*, (D. Colo.), the United States alleged that understaffing caused the facility's vulnerable patients to suffer malnutrition, dehydration, pressure ulcers, contractures, and, in some cases, death. The United States resolved the case for \$1.9 million.
- Vencor, Inc (E.D. Ark., D. Nev., W.D. Ky., D. Mass., C.D. Cal., D.N.H., M.D. Fla., S.D. Ohio, S.D. Cal), was one of the nation's largest nursing home chains, with more than 350 nursing homes and long term acute care hospitals. Numerous allegations led to an investigation by the Department of Justice in conjunction with the Defense Criminal Investigative Service (DCIS) and HHS/OIG. The initial investigation uncovered the long history of non-compliance and poor care and thus was expanded, becoming the first investigation of its type to examine widespread systemic problems at a major nursing home chain. After it declared bankruptcy and as part of its Chapter 11 reorganization plan, Vencor agreed to settle False Claims Act claims with a payment to the United States of more than \$100 million of which about \$20 million was attributed to the failure of care portion of the case.
- In *United States v. Twin Oaks* (E.D. LA), owners of a small nursing home chain paid \$100,000 and entered into a Corporate Integrity Agreement settling claims of significant harm to frail residents.
- In *United States v. Maxwell Manor*, (N.D. Ill.) the United States settled allegations of deplorable conditions in the facility for about \$1,000,000 plus \$610,000 for the State of Illinois.
- The United States settled *United States v. Harbor Healthcare and Rehabilitation Centers*, (D. Del.) for \$130,000 settling claims of mistreatment at a facility housing both children and elders.
- *United States v. Hillcrest Healthcare Center*, (D. Conn.), another failure of care case was settled for \$750,000 and permanent exclusion of the facility from federal health care programs.
- The Eastern District of Pennsylvania has settled numerous failure of care cases involving nursing homes and other providers. Remedies in those cases have included both monetary settlements and ongoing monitoring agreements. The most recently settled cases include *United States v. Central Montgomery Medical Center*, settled for \$200,000; *United States v. Green Acres Wyndmoor*, settled for \$143,000; and *United States v. Brinton Manor*, settled for \$90,000.
- As noted above, the United States pursued both civil and criminal cases against AHM. (The civil False Claims Act suit was settled for \$1,250,000.)

### 3. *Civil Rights Cases*

The Civil Rights Division conducts investigations of publicly owned and operated nursing homes pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. 1997. CRIPA authorizes the Attorney General to investigate and initiate civil lawsuits to address systemic deficiencies in care, as opposed to individual civil rights violations.

CRIPA investigations typically focus on allegations of staff abuse, failures to protect nursing home residents from harm at the hands of other residents, and grossly deficient medical, nursing, or mental health care.

The Civil Rights Division has successfully resolved CRIPA investigations in nursing homes in Georgia, New Mexico, Pennsylvania, Tennessee, Washington, D.C., and West Virginia. The Division has open CRIPA investigations of nursing homes in California, Maryland, New York, South Carolina, and Tennessee.

The Civil Rights Division's recent investigation of a nursing home in New Mexico is a good example of the Division's work in nursing homes. The Division uncovered numerous dangerously deficient violations in the nursing home. The Division found that medical and nursing care at the nursing home was so deficient that it was aiding and contributing to the needless suffering and untimely deaths of the residents. The following are just three of many examples of residents who died untimely deaths as a result of failures by medical and nursing staff to properly care several residents:

- Despite numerous findings of abnormal and even life-threatening low blood-sugar levels, a 71-year-old resident died because staff failed to respond to these obvious signs of distress.
- In a frighteningly similar example, a 56-year-old resident had, on at least two-separate occasions, tests that demonstrated that he was not receiving an adequate amount of anti-convulsant medication. Nursing home staff failed to respond to these findings. As a result, the resident developed continuous and uncontrolled seizures that contributed to his untimely death.
- A resident who was admitted to the nursing home for rehabilitation following hip surgery died a week after being admitted because staff did not follow proper safety procedures for feeding her, and she died of aspiration pneumonia.

The Division also found that the nursing home's dangerous medication practices were directly resulting in the untimely deaths of residents. For example:

- A resident died of aspiration pneumonia after being prescribed several different anti-psychotic medications, including nearly ten times the recommended dose of one such medication. (The sedation resulting from psychotropic medication is known to cause swallowing difficulties in elders.) There was no justification for the dangerous regimen.

- A 94-year-old resident was being treated with large amounts of psychotropic medication without adequate justification or monitoring. As a likely result of the side-effects of these medications, the resident suffered recurring bouts of aspiration pneumonia. Even though the resident was evaluated for swallowing problems, nursing staff failed to implement recommendations made to address the issue, and the resident died.

The Division also found that the nursing home residents suffered, and often died, in needless pain, making their last days a nightmarish existence. For example, a 66-year-old resident with terminal bone cancer was admitted to the nursing home for end of life of care. Despite the obvious need for pain management care, the nursing home horribly mismanaged the resident. At one point, she even had her pain-management medication reduced to one-tenth of what she had previously been prescribed. In the opinion of the expert for the Civil Rights Division, allowing a human being to die under such circumstances is "unconscionable."

The Division resolved this investigation with a court-enforceable agreement. New Mexico has agreed to address and correct all of the violations identified by the Division. The Division's findings letter and court-enforceable agreement in the New Mexico nursing home matter, as well as the Division's findings in other kinds of CRIPA cases, can be found at the Division's website, <http://www.usdoj.gov/crt/split/index.html>.

The Division is currently conducting an investigation of two veterans' nursing homes in Tennessee. Immediately following the Division's on-site tours, Tennessee announced that it was temporarily closing admissions to these two facilities. The Division has not yet concluded the fact finding portion of its investigation.

#### 4. *Working Groups and Outreach*

Several jurisdictions have working groups that pursue outreach relating to abuse and neglect of frail elderly patients in long term care. The Eastern District of Pennsylvania, which has been extensively involved in nursing home issues for more than a decade, has had an active outreach program, including hosting a seminar entitled "Elder Abuse and Neglect Medical Forensics Seminar" attended by more than 120 federal, state, and local law enforcement personnel, co-sponsoring Grand Rounds Program at The Reading Hospital and Medical Center to address the signs and symptoms of elder abuse and neglect, and training for coroners and medical examiners. Similarly, all three districts in Louisiana were part of a working group that formed the Louisiana Abuse and Neglect Action Committee which lectured throughout the state to providers, medical schools and nursing schools on issues of fraud and abuse. Another example of such outreach is the participation of the United States Attorney's Office for the District of Columbia in the District's Adult Abuse Prevention Committee, comprised of both government and private-sector partners. That Committee has focused on the prevention of financial and physical abuse of senior citizens. In support of its mission, the committee provides training for professionals who work with seniors on such issues as financial abuse, predatory home lending, mortgage fraud and multi-cultural aspects of domestic violence.

## B. Health Care Fraud

Federal prosecutors can only pursue cases where there is a basis for federal jurisdiction, and are limited by the statutes available to us. There is no federal abuse and neglect statute. But since the enactment of Health Insurance Portability and Accountability Act (HIPAA) in 1996 which included a number of new federal health care fraud criminal statutes, federal prosecutors have successfully brought a number of systemic failure of care cases as Medicare and Medicaid fraud, in addition to fraud, wire fraud, false statement, false claim and conspiracy theories. Civil failure of care cases are pursued under the False Claims Act and at common law.

Fraud against federal programs such as Medicare and Medicaid, inures to the detriment of all beneficiaries of those programs, including millions of older Americans. Thus, the Department's health care fraud efforts also benefit elders. Since HIPAA's enactment and through FY 2006, we have recovered a total of \$11.87 billion of which \$10.4 billion has been returned to the Medicare Trust Fund. Over the same period, the Health Care Fraud and Abuse Control account (HCFAC) funding for law enforcement, which includes the Department of Justice, FBI, and HHS-OIG, cost \$2.59 billion. Thus, we can conservatively say that for every dollar the government spends on health care fraud enforcement in the HCFAC program, the Medicare trust fund recovers at least \$4. This figure does not even capture the deterrence effects of our criminal prosecutions, which are harder to quantify but exist nonetheless, saving taxpayer money. Thus, the Department's health care fraud efforts result in substantial savings to Medicare and Medicaid, strengthening those programs so they can better fund quality health care services for beneficiaries.

Over the last 10 years, we have significantly increased the number of civil cases we file and criminal convictions we obtain. In FY 2006, we had 547 defendants convicted of health care fraud offenses, the highest number to date. This represents about a 50% increase in convictions since the start of the HCFAC program in 1997. Last year we filed 217 new civil health care fraud cases, which represents an increase of about 144% since the program started in 1997. Last year was also a record year for civil recoveries. Our Civil Division, working with the U.S. Attorney's Offices, obtained judgments and settlements totaling over \$3.2 billion in fraud recoveries. Of that amount, \$2.2 billion came from health care fraud cases.

## C. Financial Fraud and Identity Theft

### 1. *Telemarketing Fraud*

In addition to failure of care cases, the Department also pursues financial crimes targeting older Americans. Telemarketing fraud costs Americans about \$40 billion every year and the Federal Trade Commission estimates that 85% of the victims are 65 or older. For this reason, United States Attorneys Offices are also very involved in prosecuting these sorts of financial cases. In *United States of America v. Payment Processing Center, LLC, et al.*, for instance, a permanent injunction that terminates PPC's operations, imposes a receivership over its assets, and establishes a multi-million dollar restitution fund for victims of PPC and fraudulent

telemarketers was obtained by the Eastern District of Pennsylvania. The restitution program will include mailed notices to all of PPC's victims who have not already received full refunds. The U.S. Attorney's Office anticipates that at least \$4 million of the defendants' assets will be available to fund the restitution program. The injunction also imposes a lifetime prohibition against PPC's owners and managers from ever again engaging in any activity in which unsigned bank drafts are used to process payments for telemarketers and the defendants also are permanently restricted in their performance of other payment processing activities.

## 2. *Identity Theft*

On May 10, 2006, by Executive Order 13402, President Bush established the President's Task Force on Identity Theft. In forming the Task Force, which was chaired by Attorney General Gonzales and co-chaired by Commissioner Deborah Platt Majoras, Chair of the Federal Trade Commission, the President recognized what many of you know from your own experience. Identity theft is an insidious crime that severely burdens our economy, and exacts a heavy financial and emotional toll on its victims. Millions of Americans are harmed every year by identity thieves, including elderly Americans. Not only are these victims cheated out of money - billions of dollars in losses - but they are also robbed of their good names, their good credit, and their invaluable time. A victim can spend months or years rebuilding a damaged credit history and cleaning up the damage caused by the thief. This can be a particularly bewildering and frustrating process for elderly persons.

Through the leadership of the Attorney General and Chairman Majoras, the Task Force announced the completion of a comprehensive Strategic Plan to combat identity theft on April 23, 2007. The plan focuses on improvements in certain key areas including victim assistance, and deterring identity theft by more aggressive prosecution and punishment.

Let me first address our efforts to prosecute and punish identity thieves. Consistent with the recommendations of the Task Force, each United States Attorney's Office has designated an identity theft coordinator who is responsible for designing a district-specific identity theft program. This could potentially include a focus on identity theft schemes which target the elderly. The United States Attorney's Offices are also reevaluating their minimum monetary thresholds in an effort to prosecute smaller identity theft rings that still cause a great deal of damage, particularly to persons living on fixed incomes. Each of the United States Attorney's Offices will also be meeting with our state and local partners to encourage additional prosecutions of identity thieves on state charges, and to discuss the creation of working groups and task forces.

We are also helping victims of identity theft. With our Task Force partners, especially the FTC, we are developing and promoting a universal police report that will make it easier for identity theft victims to report the crime. We are also actively encouraging and assisting the ABA to develop a pro bono referral program focusing on assisting identity theft victims, including elderly victims, with recovery. The Department is helping to train victim assistance counselors to respond to the specific needs of identity theft victims, including assisting them in coping with the financial and emotional impact of identity crime. The FTC and the Department

are developing educational materials for first responders that can be readily used as a reference guide for identity theft victims.

As part of a multi-year campaign, we are also increasing our outreach efforts to traditionally underserved communities, including the elderly. In doing so, we will enlist as outreach partners national organizations either that have been active in helping consumers protect themselves against identity theft, such as the American Association of Retired Persons (AARP), the Identity Theft Resource Center (ITRC), and the Privacy Rights Clearinghouse (PRC), or that may be well situated to help in this area, such as the White House Office of Faith-Based and Community Initiatives.

Identity theft ring using Social Security Administration (SSA) database to steal benefit payments from elderly (E.D. New York):

- o On February 22, 2006, federal criminal charges were filed against four defendants in an identity theft ring that used information from the SSA's computer system to steal tens of thousands of dollars in Social Security benefit payments and other money from elderly and disabled beneficiaries in the New York City area and nationwide between January 2004 and February 2006.
- o The charges allege that a former SSA Teleservice Representative ("employee") had access to the SSA's database of personal information, including names, social security numbers and bank account information, for Social Security beneficiaries throughout the country. That employee used her access to change the bank accounts designated by beneficiaries for direct deposit of their benefit payments to accounts controlled her and her three co-conspirators, who are also defendants in this case. Once a benefit payment was deposited into one of the controlled accounts, the defendants would switch the bank account back to the original information in order to conceal the fraud. They repeated this process several times in order to divert ongoing payments.
- o Their scheme was uncovered when two of the defendants were arrested by the NYPD after attempting to cash a check drawn on the account of one of the victims whose personal information the employee had accessed in the SSA database. The NYPD, in cooperation with the U.S. Secret Service, the SSA OIG's Office of Investigations, and the Queens County District Attorney's Office, then executed a search warrant at the residence of two of the defendants. The three defendants have been charged with conspiracy to commit wire fraud. If convicted, each defendant faces a maximum sentence of five years' imprisonment, a \$250,000 fine, and full restitution for the moneys they are responsible for stealing.

Defendant sentenced to 25 years in prison for his role in investment fraud and tax evasion scheme (S.D. Fla):

- o Nicholas D. DeAngelis was sentenced in U .S. District Court to twenty-five years Imprisonment, followed by three years of unsupervised release. DeAngelis was also

ordered to pay restitution to his victims in the amount of \$4,219,249.

- o In June 2004, following a three week trial, a jury in West Palm Beach, Florida, convicted DeAngelis on every count of a fifty-one count indictment, which charged him with wire and mail fraud, money laundering, obstruction of justice, perjury, conspiracy, identity theft, and tax evasion.
- o DeAngelis used false representations to induce investor victims, including several senior citizens, to send approximately \$1.5 million to his investment companies: Velvet Hammer Consulting Group and GIASI (Godly Inspired and Spiritually Invincible), Inc. DeAngelis then laundered these funds for his own use. He also engaged in actions designed to defraud the government of \$2.6 million in unpaid federal income taxes. Several investors lost their life savings by investing with GIASI and DeAngelis.

Caretakers for elderly sentenced for identity theft (D. Maryland):

- o Geraldine Wooten, age 68, was sentenced in U.S. District Court to 41 months imprisonment followed by three years of supervised release in connection with her guilty plea to conspiracy in a scheme to defraud elderly individuals Wooten worked for as well as various financial institutions. Judge Alexander Williams, Jr. also sentenced Wooten to make restitution to two elderly victims in the amount of \$150,021.56. Her husband, Sylvester Butler, age 61, was sentenced to 18 months of imprisonment followed by three years supervised release for his role in the conspiracy, and ordered to make restitution to one victim in the amount of \$85,794.24.

- o The indictment resulted from a U.S. Postal Service investigation which learned that Ms. Wooten, who had providing care for a 96 year-old woman, had used the victim's credit history, name and social security number to open numerous credit card accounts and to write fraudulent bank checks on other accounts. Prior to that investigation, Ms. Wooten worked as a caregiver to an Alzheimer's patient and had used the patient's personal information to purchase a house in Georgia and open other accounts.

Caregiver of elderly and terminally ill victim sentenced to two years for aggravated identity theft (S.D. West Virginia):

- o Patty Lou Kelley, 51, of Charleston, WV, previously pled guilty on July 20, 2006 to aggravated identity theft. The charges arose out of an investigation conducted by the Charleston Police Department and the United States Postal Inspection Service, in which investigators learned that while employed as private care giver for the elderly victim, Kelley (1) forged the victim's signature on forty-seven (47) unauthorized checks drawn on the victim's personal checking accounts, totaling approximately \$53,069; (2) made unauthorized purchases on the victim's credit cards, totaling approximately \$15,757; and (3) used the victim's personal information and credit history to apply for additional credit cards which Kelley diverted to her home address.

U.S. Attorney's Office in the Northern District of Indiana indicted three individuals relating to a bank fraud identity theft ring that operated from July to September 2005. Each indictment alleges participation in the same scheme to defraud banks and individual holders of credit cards, and to commit aggravated identity theft. It is alleged that one of the defendants, while a prisoner in the St. Joseph County Jail, searched the obituary section of newspapers for elderly people who had died but had surviving spouses. Even while incarcerated, that defendant, with the help of outside accomplices, called the surviving spouses, posing as a person from "Credit Card Services." Under the guise of inquiring whether the surviving spouse wished to make any changes to their credit card upon their spouse's death, he urged them to divulge their credit card number, date of birth, and social security number. That defendant and his accomplices utilized the information gleaned from these malicious calls to make big-ticket purchases with the stolen credit card numbers. The investigating officers and agents estimated the total loss to be at least \$80,000. Approximately fifty potential individual victims were allegedly contacted by that defendant from jail, and information was obtained from half of those persons. Most of the individual victims were elderly or vulnerable.

In the Northern District of Georgia, two individuals were sentenced in federal court on charges of conspiring to file false claims against the U.S. and fraudulently using other persons' social security numbers. Joseph Milligan received a two year prison sentence. Co-conspirator Rae Beavers received a year and 1 day in prison. Milligan and Beavers both worked at Eye Consultants of Atlanta, P.C when, in 2002, they began to steal the names, social security numbers, and dates of birth of elderly patients. They provided that information to a convicted co-conspirator, Terrence Edwards, who used it to file fraudulent federal income tax returns over the Internet. (Edwards is currently serving a federal prison term of 30 months, after pleading guilty to conspiracy to file fraudulent claims) Each fraudulent tax return claimed that a refund was due, and along with these returns Edward filed for a refund anticipation loan from Santa Barbara Bank & Trust.

In July 2002, Milligan began working for Greenville Radiology, P.A. in South Carolina. In this position, he compiled additional lists of elderly patients' names, social security numbers, and dates of birth for use by Edwards. Edwards paid Milligan between \$200 and \$500 for each list of patient identity information. Through Milligan's and Beavers' participation, Edwards filed approximately 70 returns that falsely claimed returns in excess of \$200,000.

## **2. Research, Training and Programs to Fight Elder Abuse, Neglect and Exploitation**

There is broad consensus among experts that research and practice relating to elder abuse lags behind research in the fields of child abuse and domestic violence. The Department, through the bureaus in its Office of Justice Programs (OJP), funds research, training, technical assistance, coordination efforts, and other programs, publishes statistics and reports, and identifies practitioners' needs. These efforts are beginning to make inroads into the elder abuse knowledge and program deficits. Through its activities, OJP works to enhance understanding, prevention, detection, intervention, and prosecution of crimes and promote assistance of elder victims.

Given the many entities with a stake in elder justice and the dire need to expand our knowledge and improve our programs, OJP has supported multi-disciplinary coordination and law enforcement efforts at all levels. OJP is uniquely situated to tap into expertise, apply lessons learned in other areas, sponsor innovation, and take a national view of this issue.

To better promote these goals, representatives from the National Institute of Justice, (NIJ), the Office for Victims of Crime (OVC), the Office for Violence Against Women (OVW), the Bureau of Justice Statistics (BJS), the Bureau of Justice Administration (BJA), the Elder Justice and Nursing Home Initiative, and the Civil Division meet periodically to discuss each entity's activities and identify potential opportunities, priorities and areas for collaboration.

The OJP Bureau's activities include the following:

A. National Institute of Justice Research

There is broad consensus that the evidence base relating to elder abuse lags decades behind that in other related fields. The National Research Council's National Academy of Science issued a report five years ago that said so little was known about the field that it would be premature to set a national research agenda. Indeed, the paucity of research has been a significant impediment to determining the most effective ways to address the problem.

Responding to that gap, the National Institute of Justice (NIJ) issued the first-ever solicitation for research applications relating to elder abuse, neglect, and exploitation (simultaneously with the National Institute on Aging) in 2005. Given the pent-up demand for research in this field, the solicitation yielded a large number of applications, as did solicitations in the two subsequent years. As a result, NIJ now has numerous of research projects underway, which will no doubt serve to inform the field on a number of important topics. For example, most medical professionals and other first responders do not recognize which physical or behavioral characteristics signal abuse or neglect rather than natural effects of illness or aging. There also are correspondingly few experts in the field available to provide expert consultation or to testify in court, making it even more difficult to prove elder abuse.

In response to these needs, NIJ has built a research program on elder mistreatment. Through this research we will make inroads to better understanding the prevalence of elder abuse, forensic markers of abuse and neglect, risk factors, and the effectiveness of intervention efforts.

Many of the NIJ research projects are currently underway, but we have already seen some important findings as the result of studies including the following:

- In the first study to examine physical markers for abuse in elders, the University of California, Irvine conducted a study to evaluate bruising in elders. They concluded that (1) contrary to the conventional wisdom, you cannot date a bruise by its color, and (2) 90 percent of accidental bruises in the elders studied appeared on the limbs and 10 percent

on the torso. Elders often did not remember how they got such bruises. What can we learn from this study? That if an elder has a bruise in another location, such as on the head, neck, genitalia, inner thigh, or if the bruise is a pattern bruise, someone should ask more questions about the genesis of that bruise.

- Another ongoing NIJ research project found that medical examiners encountering suspicious elder deaths have difficulty differentiating symptoms of illness from signs of abuse or neglect. Signs of abuse that might easily be recognized in a younger person are missed in the elderly. As a result, it appears that few medical examiner investigate, let alone designate abuse or neglect as the cause of death in an older person. The study's findings encourage additional research on both the decision-making practices of medical examiners and the forensic markers of elder mistreatment. The findings also highlight the need for additional training of medical examiner in this area.
- NIJ is also studying an Arkansas law requiring death investigations in all nursing home deaths. The study not only seeks to learn about forensic methods relating to elder deaths, but also whether the law itself improved conditions in nursing homes in jurisdictions where it was enforced, and what kind of an impact the law had on prosecution of nursing home abuse and neglect.
- Researchers also are examining non-nursing home long term care and the state oversight systems and standards that govern those entities, which differ dramatically from state-to-state. This project will survey programs designed to detect, prevent, investigate, prosecute or otherwise redress abuse of frail elders who live in residential care facilities (RCFs), and provide recommendations for strengthening these programs. To do so, the study will describe and assess the responsibilities and processes in state agencies that license RCFs for identifying, addressing, and preventing abuse of residents; describe and assess the role and performance of Adult Protective Services and ombudsmen in investigating and resolving abuse allegations; describe the role of law enforcement in investigating and prosecuting cases; investigate the causes of underreporting and potential solutions; identify and describe innovative practices or model systems, including coordination across agencies; assess the feasibility of their implementation in other states; and make recommendations for changes in policies and programs.
- A long-term study will spotlight the risks for abuse and what types of services victims have received. This will highlight which victims receive help and which do not and how reporting of victimization affects the course of abuse.
- The National Center on Elder Abuse reports that 92% of financial abuse victims are elderly women and the most vulnerable group are those over 80. Very little else is known about risk factors for financial abuse of the elderly. Thus the goal of this study is to identify factors associated with financial abuse of the elderly as opposed to other forms of abuse.
- In another study still underway, similar to the bruising study described first, researchers

will examine how practitioners can determine whether a pressure ulcer was caused by neglect.

- Finally, NIJ is considering several additional areas of research on elder abuse, including understanding the capacity of elderly individuals to participate in the prosecution of elder abuse cases and evaluating the effectiveness of technologies for detecting elder mistreatment.

In sum, NIJ's elder abuse research portfolio is beginning to yield results important to the detection, prevention and prosecution of elder abuse. Importantly, one of the guiding principles in NIJ's grant-making in this area is that the research not occur in a vacuum, but that the results have the potential to assist practitioners and policy makers.

In addition to NIJ's efforts, OJP's Bureau of Justice Statistics also has examined the prevalence and types of crimes against the elderly. This study, of households, indicate that elders are less likely to be victims of violent crime, but the statistics do not capture crimes against elders living in any type of facility.

#### B. Support for Victims of Elder Abuse

Our Office for Victims of Crime (OVC) has worked steadily to increase awareness of elder abuse among law enforcement, care providers, and other professionals. OVC supports services to victims of elder abuse, efforts to investigate these cases, and initiatives to prevent further abuse.

Through an OVC grant, Baylor College of Medicine built on a multi-disciplinary effort to address elder abuse in Houston, Texas in a partnership involving law enforcement, adult protective services, the medical community, and the county attorney. Baylor developed a manual to guide other communities interested in undertaking similar efforts. The grant also funded Baylor to fund two additional pilot sites for its program.

Although there have been fatality review teams to analyze the deaths of children and younger adults for decades (identifying both systemic problems that led to the death and potential solutions) there was not a single known elder fatality review team until a few years ago. With funding from OVC, the American Bar Association Commission on Law and Aging (ABA) partnered with the National Association of Adult Protective Services Administrators (NAPSA) to enhance the fledgling elder abuse fatality teams that had been developed in a handful of jurisdictions. These multi-disciplinary teams identify the cause of fatalities in order to improve the handling of future cases and show great promise. The OVC grant also funded development of a "replication guide" providing guidance to communities that wish to establish their own teams.

OVC also is working with partners to develop training videos for a range of professionals who encounter elder abuse. Each video will target a specific discipline, such as law enforcement, the judiciary, probation and parole professionals, adult protective services, victim advocates and health care professionals. In addition, OVC has worked with organizations

such as medical schools, the International Association of Forensic Nurses, the Police Executive Research Forum, and the American Probation and Parole Association to develop curricula for identifying and responding to elder abuse cases. Like the videos, each curriculum will be targeted to a specific discipline. Curricula for physicians and probation and parole officers have already been completed. The curricula for law enforcement and forensic nurses are still in development.

C. Office of Violence Against Women Training Grants

The Department's Office on Violence Against Women (OVW) administers the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities program (Training Grants Program). That Program was authorized in the Violence Against Women Act of 2000 to address the obstacles encountered by victims of crimes who are older or who have disabilities. Through this program, OVW has awarded over \$20,270,000 from FY 2002 through FY 2006. This grant program provides a unique opportunity for targeted training for law enforcement officers, prosecutors, and court officers to enhance their ability to identify, investigate, and prosecute abuse, neglect, exploitation, and violence (including sexual assault and domestic violence) against elderly individuals or individuals with disabilities. States, tribes, units of local government, nonprofit nongovernmental organizations, state or local government agencies, private nonprofit victim advocacy organizations, and public or private nonprofit service organizations for older individuals or for individuals with disabilities may receive funding under this grant program.

From July 1, 2003 to June 30, 2005, Training Grants grantees trained 12,991 individuals, including law enforcement officers (54 percent), prosecutors (8 percent), victim witness specialists (5 percent), court personnel (4 percent), and corrections staff (1 percent). The most common topics of training events were issues specific to victims/survivors who are isolated or institutionalized, the impact of aging and/or disabilities, effective communication with individuals who are older or with disabilities, law enforcement response to domestic violence, and law enforcement response to elder abuse and exploitation. A grantee from this program reports that, "[i]n a nutshell, the Training Grant has given us the opportunity to raise awareness about elder abuse, about resources available to address the problem, and to foster better communication between law enforcement and others in the elder services community."

Starting in FY 2005, OVW embarked on the development of a pilot program for systemic training on elder abuse for the criminal justice system which included the development of national training curricula for law enforcement officers, prosecutors, judges and training teams who provide training for law enforcement on the local level. In 2007 and 2008, ten communities will pilot the four curricula.

The Violence Against Women Act of 2005 resulted in significant changes to the grant program. The grantees may now address the issues of dating violence and stalking and no longer address only violence against women with disabilities. The age of victims to be the focus of the grant program activities was lowered to victims 50 years of age or older. In addition, the program purpose areas may include training for governmental agencies and victim assistants and

the provision or enhancement of services for older victims. The new OVW grant program, Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life, will create or support multidisciplinary collaborative community response to older victims and conduct cross training for victim service organizations, governmental agencies, courts, law enforcement agencies, and nonprofit, nongovernmental organizations serving older victims.

D. Bureau of Justice Assistance programs

The National District Attorney Association (NDAA) and the American Prosecutor Research Institute (APRI) have a Center for the Prosecution of Child Abuse and a Center for the Prosecution of Domestic Violence to support the efforts of local prosecutors nationwide in pursuing those difficult cases. But it has no similar center for the prosecution of elder abuse. Thus the Department funded a review of what kinds of elder abuse cases local prosecutors are bringing around the country, case studies of a few jurisdictions, and an examination of some of the challenges and ingredients for success in such cases, to lay foundation for similar types of assistance for elder abuse cases. The reports that are the result of that grant are available on the APRI website.

3. **The Elder Justice and Nursing Home Initiative**

The Department's Elder Justice and Nursing Home Initiative, housed in the Civil Division, facilitates and supports failure of care cases, research, training, outreach, collaborative efforts, and the advancement of forensic knowledge relevant to elder abuse, neglect and exploitation. Some of the Initiative's ongoing projects include the following:

- Support for failure of care investigations and cases, such as those discussed above, by providing the assistance of nurse investigators, data analysis, coordination with relevant entities, and by balancing the United States' law enforcement, fiscal and public health interests on an ongoing basis.
- In 1999 and 2000, the Initiative organized regional conferences providing training on the investigation, prosecution and prevention of abuse, neglect and fraud in long term care and encouraged participants to create multi-agency, intergovernmental Working Groups to continue meeting and working together at the state and local level. (At the time of the meetings, many of the individuals working on these issues had never met, even if they worked in the same city, or even the same building.) Some groups continue to meet and pursue activities such as those described above. The working groups generally are comprised of state and federal, and sometimes local, law enforcement as well as state and federal regulatory agencies. Although they pursue varying missions, many of these groups strive to identify appropriate investigation targets and to promote cooperation in the investigations and cases that follow.
- The Initiative has organized training, conferences, roundtables, meetings and other events addressing specific elder abuse-related issues designed to advance the state of knowledge, enhance participants' expertise and foster collaborations. A September

2006 meeting brought together attorneys and investigators to discuss failure of care cases. An April 2004 forensics meeting brought together OJP's elder justice grantees and other stakeholders to discuss advances, challenges and new horizons in elder abuse research. In addition, the Initiative works with a myriad of other entities and individuals, federal, state and local, as well as public and private, on a broad array of elder abuse issues.

- The Initiative also has worked with most of the OJP Bureaus to launch elder abuse-related research, training and other projects designed to enhance the knowledge base, training and practice in the field of elder abuse, neglect and exploitation.
- These efforts have resulted in an elder abuse-related grant program, housed in the National Institute of Justice (NIJ), the first-ever elder abuse research solicitation (simultaneous with the National Institute on Aging) in 2005, and two additional solicitations in 2006 and 2007. This NIJ grant program has resulted in a dramatic increase in ongoing elder abuse research, particularly relating to forensic issues. There is a general consensus that research in elder abuse and neglect lags behind that in the fields of child abuse and domestic violence, posing significant impediments to detection, intervention and prosecution. As described below, the NIJ grant portfolio spans a broad range of topics, with a common feature that they are designed to yield results that are of real use to practitioners in detecting, intervening in, preventing, assessing and prosecuting elder abuse. (That research is described in greater detail below.) Specifically, this research redounds to the benefit of prosecutors because it is creating a body of data to rely on in supporting when a condition is the result of wrongdoing versus a condition of aging. In addition, the Department's efforts have fostered medical-forensic experts who are critical to pursuing elder abuse and failure of care cases.
- The Initiative also has worked on projects with OVC, OVW, BJS and BJA, for example to develop training DVDs, curricula and other materials and a project to examine the needs of local prosecutors in pursuing elder abuse prosecutions. In addition, representatives of several of OJP's Bureaus have been meeting regularly with Initiative representatives to coordinate and identify future opportunities for collaboration.
- The Initiative co-chairs an interagency Elder Justice Workgroup that meets periodically, bringing together federal entities with a role in elder abuse prevention. Participants include components from the Department of Justice (Civil Fraud, the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), the Office for Victims of Crime (OVC) and Violence Against Women Office (VAWO)), from HHS (Administration on Aging (AoA), Centers for Disease Control and Prevention (CDC), the National Institute on Aging (NIA), Office of Inspector General (OIG), Centers for Medicare and Medicaid Services (CMS), the Administration for Children and Families (ACF), and the Substance Abuse & Mental Health Services Administration), ACF (SAMHSA)) and occasionally from other agencies, such as the US Postal Service, the Veteran's Administration, and the Federal Trade Commission. In the past, this group has had presentations relating to various elder abuse-related issues, often about ongoing projects, research or innovations. Recently, the group has begun to address data

collection issues vital to the field.

### **Conclusion**

The cost of elder abuse and neglect is high. The Committee can be assured that the Department of Justice will continue to pursue these cases and work with this Committee in addressing the myriad issues which I have briefly discussed this morning.